

The Media, cultural politics and the nation-state

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Introduction

In this paper I want to look at the constitutionalisation of media reform as part of the political and cultural transformation process in contemporary Thai society. The formation of the media space as public space is at the heart of the development of a civil society which a fully democratised public sphere is the inevitable infrastructure. It is argued that the media expansion during the economic boom period does not actually signify a greater degree of freedom of communication for all. Rather, it demonstrates the economic expression of the middle classes and of global capitalists who are in a better position to capture the media space. For over a decade they continue to enjoy the growing freedom and have been able to make their voices heard loudly and constantly. It has, thus, become the hegemonic expression in this emerging public space.

What has been the political will and the role of the state in creating a democratised media infrastructure ? Is control on freedom of speech being relaxed or has censorship taken a new form ? This paper will attempt to examine how the state is resisting the pressure for media reform vis a vis its effort to construct an image of supporting information and communication rights. During this critical time of economic decline it is particularly important to understand the cultural politics on how different social forces must struggle for media space in order to set their agenda for public attention and solution. Without democratising the media space Thai society is witnessing more and more outcry from those who are politically and economically oppressed. They must take to the street to demonstrate their call for more justice on certain public policies which have a direct effect on their livelihood. For example peasants and fishing villagers, indigenous people who are deprived of their land and livelihood due to dam construction projects, reforestation projects and other large scale public project such as the Yadana gas pipeline project.

Reforming the electronic media : re-regulation or deregulation

Article 40 of the new constitution (1997) has been set out with a view to reforming the electronic media. When one discusses about electronic media in Thailand it is generally understood that firstly, it means state radio and television, which is the sole category of legal ownership within the existing structure. The Radio and Television Act of 1955 stipulated that state ownership of radio and television stations are exempted from any government regulation provided in this act. Therefore, the Thai state is able to appropriate ownership right on the basis of its political power from the early stage of radio and television inception. Secondly, it is also understood that although there is no private ownership of the electronic media *per se* media entrepreneur could have operational ownership right through state concession.¹

The problems of the electronic media which stem from this structure are many fold. Foremost is the monopolistic nature which has been built into the structure (similar to the monopoly of political power of the Thai state). In effect, the rights and freedom of information and communication, for which the flow of creation and distribution of ideas

¹ We can explain this from the view of an authoritarian state that "*what the state does not permit, it forbids*". In a straightforward manner, then, media entrepreneurs are not able to hold a broadcasting license if they want to operate a radio or television station. But as Kasien Tejapira (1999) pointed out the reality of the Thai state is the opposite. The real meaning of the law would be "*what the Thai state forbids, it actually permits*". Hence, media entrepreneurs are permitted to operate most broadcasting stations but under the patronage relationship of the state.

and culture, have become monopolised by the state and a handful of media corporations. With the force of the capitalist economy, both national and global, the electronic media sphere is rapidly being turned into a private space for which commercial expressions prevailed over other forms of expressions. Under this new and rapidly changing context the Thai state is circumscribed to conform to the highly powerful and penetrative economic force (Ubonrat Siriyuvasak, 1996).

But contemporary history informed us that it is the Student Movement and the public intellectuals of the 1970s who first put the question of the rights and freedom of speech, especially public expression, onto the national agenda. They struggled and spearheaded against the dictatorial military rule of Thanom-Prapas in their call for a more open, just and equitable regime. The demand was for a democratic state in place of the authoritarian state. After the October Revolution in 1973 they pressured the government to reform the state radio and television system owned and controlled by the military. However, the attempt of the civilian government of Kukrit Pramoj to re-regulate the electronic media failed to materialise. This was followed by the defeat of the elected government led by the Democrat Party in 1976. The confrontation of the democratic forces and the old regime ended with the bloody massacre of hundreds of students at Thammasat University.

At this political disjuncture the Student Movement and the government were unable to wrangle with the power entrenched in the long established authoritarian broadcasting system. The regulation scheme that was set up became the censorship organ of media content. The call for political regulation of state media in order to open the space for public expression and information was turned into systematic censoring of public expression such as in drama, music and news programmes. While on the other hand, the military, still in control of most of its radio and television stations, set up an internal regulation body in order to resist the new regulation of the civilian government. As a result, the media space within the ruling power of the military have been kept nearly intact. The new group of military leaders continued to use them for political legitimisation and to enrich themselves with the economic gains (Saithip Sukatiphan, 1991).

In 1992, the May Demonstration once again manifested the call of the Thai public for more rights and freedom of information and communication. The campaign for social and political reform at the aftermath of May 1992 became the key political agenda and received a wide range of support on a national basis. Among the list on the reform agenda is the question on how to re-regulate the state media (Prawes Wasi, 1992). But since the socio-political and economic contexts of the 1980s and 1990s were quite different from the 1970s the Anand government was able to push through with its liberalisation effort for the broadcasting regime in some way.

It reformulated the members of the National Broadcasting Commission (NBC) to include academics in communication, representative from women, children and consumer's groups. Apart from juggling with the state content regulator, the NBC, the government deregulated the broadcast system by introducing a new television channel for open private bidding. As a result, the concession given to ITV, the new UHF television station run by a consortium of ten business partners, was inaugurated in 1996. In addition, the limit on spot advertising on radio, 12 minutes per hour, was lifted.² There was a giddy sense of freedom among media practitioners. The free market philosophy was, thus, put into practice and it was welcome by the middle classes. These deregulation provisions which appeared to pave the way for a new era of freedom of speech were, in fact, part of the economic liberalisation process that went hand in hand with the larger picture of the economic boom years. On the one hand, the growing middle classes have been enjoying a greater degree of freedom as a consequent of the double digit economic growth during 1985-1990 and 1993-1995 while the poor are deprived of their livelihood and their basic human rights for which communication right is one of the central issue. On the other hand, the globalised economy brought not only the liberalisation of the financial sector but liberal consumption of a fast growing consumerist society.

It was obvious that the emphasis for change was on the notion of deregulation rather than on the question of re-regulation in order to extend the public sphere for the majority of the people. In short, the re-regulation agenda in the 1970s has been transformed to a deregulation agenda for which economic rights to information and communication took priority over political and cultural rights. Here the conceptualisation on reforming the broadcast media split into two camps. The liberals which are made up of the power elites, the capitalists and the urban middle classes believed that deregulating the broadcast media would naturally lead to freedom of speech and communication. The campaign for constitutional reform in 1996-1997 led by Anand Panyarachun and a group of lawyers, business persons and technocrats who represent the elite class and the capitalist class were able to constitutionalise the liberalisation of the politico-economic spheres through the legal reform process. They trust that a libertarian regime with the power of the free market would defeat the conservative and the authoritarian military who disapprove of the idea of sharing power with the new capitalist class (see part 2 and 3 in Kasien's **The Land of the White Crow** for more detailed on this argument).

On the contrary, Prawes Wasi, one of the central figure of the Reform Movement after May 1992, believed that an open media forum, free and equal access to information are the source of intellectual enlightenment. Once people are enlightened they would resist any kind of manipulation by the state and would take active part in forming a civil society. His strategy on expounding media reform is to reverse its monopolistic nature and hegemonic power position in the Thai polity. The democratisation of the mass media, the state and the broadcast media in particular, is essential to the reform process and to achieving equality, justice and peaceful relationships among social classes. Prawes spelled out four areas of basic rights; the right to live, to social participation, to self development

² In 1996, there were further deregulation on content. For radio the proportion between news and entertainment programmes, and advertisement are 25 %, 58 % and 17 %. For television the proportion between news and entertainment programmes, and advertisement are 15 %, 65 % and 20 % (Public Relations Department, 1996).

and to information and knowledge which would rid oneself of ignorance. These rights as he saw it are the basis of human rights in a democratic society (1992, pp. 66-67).

His view received support from the non-governmental organisations, the disadvantaged and the people-based organisations who have been deeply affected by information distortion, mis-information and discrimination during the economic boom years. They see their struggle for democracy encapsulated in the overall reform of the socio-political structure for which media reform is part of.

If we follow this line of thought it would mean reforming the state and its agencies so that their power is decentralised and more inclusive instead of exclusive. It would also mean a state which is accountable to the public and open to criticism and scrutiny. In the area of the broadcast media this would mean re-regulating the state media so that the public could have free access, the rights and freedom of speech are guaranteed together with fair and diversified information and programming which must become part of the reformed structure and environment. This leads us to the question on how and what kinds of reform should be carried out in a situation where the broadcast media have been an "*unregulated*" domain for over half a century.³

Public resource, private property and ownership right

The guarantee on the rights and freedom of expression of individual and the media was enshrined in the new Constitution of 1997 in Article 39 of Section 3 - The rights and freedom of the Thai people. This is the classical basic and minimum rights and freedom of expression guaranteed by the state similar to the rights and freedom of expression guaranteed by previous constitutions. Nonetheless, there are two new major clauses which protect the rights and freedom of the media from the interference of the state. That is the state cannot close down printing houses, radio and television stations to forbid freedom of expression and that the state cannot pre-censor news and columns or programmes except during a war. Similar provision regarding the rights and freedom of individual media professionals was enshrined in Article 41. Together, they form the cornerstone for private rights and freedom of expression that would broaden the space for public and private, especially commercial, expressions.

But the constitutionalists reasoned that the media space and the rights and freedom guaranteed in Article 39 would not be secured unless there is also some guarantee on the access of the broadcast media and telecommunication network by the private media entrepreneurs. More importantly, it is to guarantee that the liberalisation of telecommunication and the broadcast media would be placed on the national agenda. Hence, Article 40 came into being as part of the whole package on the rights and freedom of expressions. It is not only something new to the present Constitution but it has thrown up the question on the legitimacy of ownership right of the radio frequencies for public debate.

³ Although frequency assignment is regulated by the Post and Telegraph Department the Radio and Television Act of 1955 was intended primarily to pre-empt all kinds of management and content regulation. The state could, therefore, operate both radio and television freely and not having any accountability towards the public.

Article 40 read as follow;

“The radio frequencies for radio and television transmission, and in radio communications are national resources to be used for public interests

An independent state regulatory agency must be set up to supervise the assignment and licensing of frequencies for radio and television broadcasting and for telecommunications stipulated in clause one of this article

The objectives of clause two must take into consideration the highest public interests at the national and local levels, in the area of education, culture, security and public safety and other public benefits, including free and fair competition.”

It could be seen that there are several new and competing notions written into Article 40. However, what is entirely novel is the notion that radio frequencies (as part of the electromagnetic or radio spectrum) are national resources and they must be distributed for public interests.⁴ But although the text of Article 40 appeared to support the creation of a public sphere through the media reform it is essentially to liberalise the ownership right of the spectrum from the monopoly of the state into private hands for “*free and fair competition*” (clause 3). I shall discuss below the cultural politics on the institutionalisation of ownership right and the right to have access to freedom of expression as the public debate proceeded during the passage of the bill to set up an independent state regulatory agency proposed by the government in April 1999.

In the initial draft of the constitution it was proposed that the radio frequencies are “*a public resource*” instead of “*a national resource*” adopted in Article 40. The former is a general concept on radio frequency and the spectrum in Western industrialised countries. It is seen as a public and limited resource for which technical, socio-cultural, political and economical approaches must be integrated in regulating this resource for public interests. But the term “*public*” implies that the owner of the radio frequency and the spectrum are the general public or the people who are the highest sovereign of a democratic nation-state. On the contrary, the term “*national*” in the Thai authoritarian context implies the sovereignty of the state over the people. It provided the ground for debate between the conservatives, the liberals and democratic groups on who actually have the right over this resource? Is it the same as other kinds of property rights such as land rights? And who should be entitled to manage this resource?

⁴ The focus of our discussion will be on the media and how it is going to be reformed although Article 40 is also about reforming the telecommunications sector. Discussion on telecommunications will be on the governing principle of regulation where they are related to radio and television rather than on the detail of the reform.

During the debate over the question of property right and the reallocation of frequencies the prevailing interpretation by most of the state agencies relating to the use of radio frequencies are of the opinion that the state should continue to hold both property right and management right to the radio frequencies.⁵ The military openly demonstrated their resentment against Article 40 and the draft law on the independent regulatory agency for the licensing of radio and television stations. They felt that their property are taken away unfairly (**Kao Sod**, 5 May 1999, **Thai Post**, 5 May 1999).

"...In the past, the government allocated the frequencies for us. But now we are being pushed out. We were given the land deeds and they would be taken back for resale. This is dangerous for us..." (the emphasis is mine)

(General Kasemsak Pluksawad, 1999)

The outcry from the top rank military officers that Article 40 is robbing them of their rice bowls was met with negative responses from the press and the public (see for example **Thai Post**, 6 May 1999, **Matichon Sudsabda**, 11 May 1999). But a more rationale argument from the military is that they are the state agencies which first and foremost, represented the people. And secondly, they are responsible for national security for which radio communications, radio and television are important instruments in an information warfare. General Vachara Ritakani categorically spelled out the type of warfare in an information society to show the centrality of the allocation of radio frequencies to the military ("*A case study of information warfare*", **Matichon Sudsabda**, 8 June 1999). By this argument, the military viewed radio frequencies as a national resource that implied the exclusive rights of ownership and management by the state and its security agencies.

Nonetheless, the objection of the military on re-drawing the line on ownership right is closely intertwined with the privilege economic right under its monopoly but based on the claim of its function on national defence. While on the other hand, it is derived from the rights to freedom of expression for which the military also laid its claim on up-holding socio-cultural security.

"...Radio is one of the weapon to secure national stability. We were given the land for our livelihood. We generate revenues and pay tax to the state coffer properly. But still they would be taken away just because some one walked pass these plots of land and want to have them. When they have the opportunity they then write up the law so that they can take them away, is this justice ? We spend 60 % of our revenue from radio for our regiment development, 30 % for station development and 10 % for station employees. It

⁵ Statistics show that in 1998 the Ministry of Defence has 214 radio stations or 41 % of the total 523 stations. The Army alone has 128 radio stations. The Public Relations Department (PRD) has 145 stations or 27.7 % and the Mass Communication Organisation of Thailand (MCOT) has 62 stations or 11.8 % and ten other state agencies hold 102 stations or 19.5 % of the total number of radio stations. For television, the Army has 2 out of 6 national terrestrial stations, the MCOT has 2 stations and the Public Relations Department and the Ministry Attached to the Office of the Prime Minister each has 1 station. The Public Relations Department, in addition, has 8 regional television stations. The large majority of radio and television stations are operated on a commercial basis except for the PRD's Channel 11.

is all because we do not receive sufficient budget for each and every regiment..."

(General Athit Sirithorn, 1999)

But the press argued that the military own a large share of the radio stations with special exemption on tax payment. Revolutionary Order 101 (14 March 1972) during the Thanom-Prapas military dictatorial regime permitted the military to use the revenue generated from military radio and television stations within their own regiments. The military did not have to channel their revenue to the Ministry of Finance. In addition, military radio and television stations are exempted from paying tariffs and income tax (**Matichon Sudsabda**, 11 May 1999).

The view of the military exemplified the view of other state agencies such as the Public Relations Department and the Mass Communication Organisation of Thailand (MCOT) which are the major stake holders of radio and television stations. By proposing the draft bill on the Radio Frequency Regulatory Agency for the licensing of radio and television stations, and telecommunications the Government and the Council of State are also of the same opinion that the state must continue its ownership rights and the operation and the regulation of the radio frequencies (**Bangkok Post**, 16 May 1999).

Our concern here is to explicate the way in which the electromagnetic spectrum or the radio frequencies for broadcasting and telecommunications, to a large extent, have been appropriated into private property. In the past, the ownership right of this resource was given to state agencies such as the military and the PRD and MCOT for the purpose of securing national stability or political legitimation of the government. The privilege rights of these state agencies have turned radio frequencies into private property of the head of various military units. They could be transferred to the subsequent head as the frequency deed was assigned to certain unit or regiment without interference or regulation by higher authority. From this right the military and other state agencies collect rents from media proprietors who seek economic right to freedom of expression. The concession, an average of 3-5 years for radio and 25-30 years for television and telecommunication carrier and service provider, becomes the contractual right for the private sector to have access and own the property. There has not been any provision for public access or for public property right of the radio frequency for common interests.

The draft bill on establishing an independent regulatory agency for frequency allocation for broadcasting and telecommunications services spelled out 2 categories of property right. That is the right of state agency and the private sector (article 23). The frequencies for state services must be used for national interests and not for profit seeking. These include state security, dissemination of information and promotion of understanding, occupational development, education and culture and other services for the public (article 24). The second category is the right of the private sector which is provided within an economic framework. It sets the economic parameter for the industry that media entrepreneurs must provide universal access to users keeping in mind that these services must be inexpensive and that the industry must be open to free and fair competition (article 25). Those who receive the right of access or license to use the frequencies for a certain period must pay for their ownership right. Revenue incurred from licensees must be state income (article 26). The political will of this draft bill is one in which the liberals, together with the government, attempt to shift the role of the state from being the major legal

operator (seeking rent) of the broadcast media to a regulatory role for the private sector. This is based on the shared concept of private property and ownership right of media proprietors. Despite open protests and resistances from some state agencies such as the military the transformation would, in return, enable the government to centralise its power of control on the media system (through its regulatory rules) while at the same time, generate large amount of income unaccountable for in the past.

Freedom of communication and the democratisation of media structure

As the media and telecommunication reform is taking shape we can see that what is evolving is a free trade/free speech model which guarantee proprietary freedom. Although the right and freedom of expression of citizens are constitutionalised it is a negative right which restraint state action in interfering with private freedom (Article 39). Obviously, the reform is hardly about the democratisation of the media structure since there is no legal or social provision for participation and communication practice of civic groups in the media space or the public sphere.

Drawing from Venturelli's (1998) discussion about the framework of free communication in an information society that it has gone beyond the guarantee of minimum rights and the freedom from state interference. What is needed in the foreseeable future is a public communication model which takes the liberty of expression and the rights to communication of the citizens and the public as its principle.

"This approach to freedom of communication points to a constitution of public space that is neither dominated nor governed by a single logic, such as that of commercial expression, or by a handful of proprietors, such as conglomerates, oligopolies, monopolies, whether public or private. In these circumstances alone would it be practical to imagine the emergence of institutional differentiation, diverse forms of participation, and alternative reasonings and conceptualisations of the social order. For if democracy is confined solely to one sphere, to the legislative procedures of representative democracy and periodic voting, while oligarchic forms of governance and unaccountability prevail in the economy and in social and cultural life, then the prospects of freedom of communication become progressively undermined. The renewal of alternative publics, voices and groups is thus intrinsically tied to the renewal of the public sphere itself and to the elimination of built-in process of exclusion."

(Venturelli, 1998)

Apart from the government and the state agencies there are two groups of people outside the legislative realm who participate in the legal and social institutionalisation of the new structure of the broadcast media. These are university academics and the non-governmental organisations. The Council of the Mass Communication Faculty Members of Thailand (CMCT) which is the umbrella organisation of media academics from state and private universities has been taking active role in the reform debate. They criticised the Government on 3 points in their open letter of 5 April 1999 prior to the first reading of the draft bill on establishing the Radio Frequency Regulatory Agency.

Firstly, the law drafting process was not transparent to the public and did not abide by democratic procedure. Since the Government should have nothing to hide the CMCT asked that a proper public hearing be carried out before submitting the draft to the Parliament.⁶ Secondly, the draft bill did not seem to be carrying out the political will of the Constitutionists on establishing an "*independent regulatory agency*". On the contrary, it specified that the agency would come under the control of the government and certain state agency.

Finally, The draft bill as it looked would not lead to real and significant media reform. This was due to the fact that the bill proposed to set up a single regulatory agency for both broadcasting media and telecommunications. The argument against the proposal was that the liberalisation logic of the telecommunications industry would become the dominant logic of the agency. While the principle of freedom of communication and the organisation of an open, participatory and equitable public sphere would quickly subsume under the free trade logic. Their open letter was signed by 70 academics and 6 journalists (mainly from major newspapers). It received wide publicity from the press as well as drawing public attention to the issue on how the broadcast media should be reformed.

The non-governmental organisations (NGOs) comprised of a network of civic organisations working in the area of children, women, the disabled, workers, farmers, indigenous people under an ad hoc committee called, Voice of the Voiceless, led by representatives from the Foundation of Thai Volunteer Service (TVS) and the Union for Civil Liberty (UCL) has been an active agent on the media reform movement. Since their organisations represent the disadvantaged and the oppressed whose voices are structurally silenced the reform agenda was seen as an opportunity to restructure the media and the public sphere. They trust that if democracy is institutionalised inside and outside of the legal process their voices would be heard instead of being suppressed.

On their reform agenda, the Voice of the Voiceless highlighted free and equitable communication as their central theme. They also quoted from Cees Hamelink on people's power and the media that "*people's media are owned and controlled by the powerless with the intention to empower themselves*". It signified that the people need their own public space through the access and control of the broadcast media. Their argument is that the people must be able to access the public resource of radio frequency on the reallocation scheme of ownership right of radio and television stations. Their proposal was to allocate 50 % of the broadcasting frequencies to the public sector and 50 % to the media industry. Within the public sector 25 % would be allocated to civic groups and 25 % to state agencies. From this reformed structure a balanced and diversified production of media form and content might be created and institutionalised in the future.

The Voice of the Voiceless delivered a 6-point demand to the House Committee for the second reading of the bill on the Radio Frequency Regulatory Agency. These are;

⁶ The Council of State altered the principle of the initial draft accepted by the Cabinet in June 1998. Its new draft was accepted by the Cabinet on 30 March 1999 and submitted to the House of Parliament on 7 April 1999 without an official public hearing process or any open debate.

1. To hold an open public hearing so that the public could participate in the process of legal reform
2. To take into consideration the socio-cultural dimension of communication and public interests more than the free trade and commercial logic of the industry in establishing the independent regulatory agency
3. To separate the allocation and licensing of the broadcast media and telecommunications so that each area is independent from the other
4. To organise the composition of commissioners in the independent regulatory agency in such a way that it represents a participatory democracy. Hence, there should be representatives from the public sector (meaning state), academics, professionals and proprietors, non-governmental organisations and civic groups, people's based organisations and the disadvantaged, etc.
5. To hold a public forum on how to draw up a master plan on communication. It must be a transparent forum running parallel with the process to establish the independent regulatory agency
6. To open the entire process of legal and social reform of the media and telecommunications for public scrutiny and to take people's participation as its major objective.

The participation from both the academics and the public through the Voice of the Voiceless was seen as an opposition to the Government proposal. The CMCT tries to focus its role on organising forum for public hearing throughout the country. But it received little support from the Government despite the fact that the Public Hearing Subcommittee was set up by the House Committee for the second reading of the bill on the Radio Frequency Regulatory Agency which the Minister for the Ministry Attached to the Office of Prime Minister is the Chair. As it happens, it has been quite a struggle to open up the passage of this bill which concerns the management of one of the most valuable "public resource" for a broad range of public participation.

Furthermore, the Government did not take heed to the call to equally share the radio frequencies between the public and the private sector (50 % to 50 %). On the contrary, the Government proposed to share the radio frequencies between the state and the private sector (see Article 24 and 25 of the draft bill) as we discussed in the previous section. But the Government was prepared to give only minimum right to the public by providing some space at an "appropriate time" for public use without charge on state media. It was stipulated at the end of Article 24 that "*as a measure to prevent a monopoly this right of access to a certain time slot must not be given on a regular basis to any particular group*". This implies that the right to access of the public or civic groups depends largely under the discretion of the state agency. And that the degree of freedom of speech is relative to the exercise of control by the state agency.

In fact, there has not been any clear policy on how much time would be allocated for public use. Would this be during the day time or night time ? Who could have the right of access ? Why is there stipulation against "public monopoly" without any stipulation against "private monopoly" ? All of these could be taken as a denial of the ownership right of civic groups or the public from participating and acquiring this public resource. This would in turn prohibit the public from its right and freedom of communication. When the Voice of the Voiceless asked for a 25 % share of the right to

access the radio frequency it is proposing a fundamental and democratic restructuring of the media system. A new system in which democratic participation is possible. By this right of access, the public can apply for community license on a non-commercial basis and renew the public sphere that has been closed off for the past decades.

Re-defining the nation-state and cultural politics

The new Constitution on the whole is attempting to establish a more democratic system in place of the old authoritarian power relations. It guaranteed a wide range of rights and freedom not only to individual but to collective entity and community. These rights and freedom are seen as positive rights in a participatory democracy. Looking at the Constitution and the road towards political and social reform it would seem that the democratic forces of the Thai polity has made quite a big stride. On paper, the decentralisation of state power, the auditing institutions and the increased participation in political, socio-cultural and economic decision and formulation of public policy in these areas were designed as the driving force towards democratic transformation. And through the constitutional reform process the meaning of the nation-state has been gradually re-defined. The state could no longer claim that they alone signify the nation because they represent the interests of the nation. In this new structural design, however, the nation-state is a much broader concept which include a wide range of cultural and political differences. It encompasses not only state agencies and institutions but the general public, the ethnic groups, the poor, women and men, young and old, and the disabled. On the contrary, the centralised power of the state is supposed to be declining when it must relegate itself to lesser authority. Future public policy must be, theoretically, more inclusive, not exclusive as is often the case.

As we turn to investigate the constitutionalisation of media reform as our test case we found competing notions articulated in Article 39 and Article 40, in particular. It was quite obvious that although Article 40 came out to be a compromise between the conservative, the liberal and the democratic groups there was a kind of balance between these positions built into Article 40. The cultural field was re-opened, however, when the Government proposed the draft bill on establishing the Radio Frequency Regulatory Agency. It became part two of the power negotiation regarding the radio frequency and its economic and political and cultural rights of access and freedom of communication. The key condition in Article 40 which became the crux of the debate as well as the major obstacle to media reform was that the broadcast media and telecommunications were put together in the same article. The apparent balanced positions was easily shattered since the telecommunications' approach on reform dominated the debate of the House Committee on the draft bill on establishing the Radio Frequency Regulatory Agency. The reform agenda of the telecommunications sector is based on the free trade, free market logic of the globalised economy. And the previous governments and this Government were in agreement to privatise the state services as a preparation step for full liberalisation.⁷

⁷ The Government and the Ministry of Transport, has laid out a liberalisation plan for the telecommunications services by outlining the time frame for internal liberalisation by 1999 and for external liberalisation by 2006 (Telecommunications Master Plan, 1997). However, the state agencies providing telecommunications services, the Telephone Organisation of Thailand (TOT) and the Communication Authority of Thailand (CAT), are resisting the Government privatisation plan that would decrease their share to 30 % and to sell the majority of the shares to international strategic partners (see for example **Krungthep Thurakit**, 23 October, 1997, 7 July 1998, 21 November, 1998 and **Matichon**, 4 March 1999).

The legal reform of the broadcast and telecommunications services that we are witnessing at the moment is, therefore, a legalising process for the private sector to have economic right of access of the radio frequencies. Secondly, by way of frequency reallocation and privatisation it enables the state to shift some of the ownership right from state agencies to the private sector. This public resource will be shared, through its private property right conceptualisation, among the state and the private sector. Once it is classified into private property by licensing or legal contract the other classifications such as common or public property right, collective right of public groups in a civil society, community right of local groups are all but disappeared. The draft bill has ultimately defined the right and freedom of expression in terms of free market expression without guaranteeing any public property right to the people nor providing fair and equal public access as opposed to the state and the private sector.

As I mapped out earlier there are conflicting interests on whether to reform state radio and television despite the Government's go ahead. Although, hypothetically, ownership right of private operators of the broadcast media will be legalised through this bill. The military and the state agencies responsible for radio and television are resisting the reallocation plan which is still unclear as to what would happen to whom. These agencies prefer the old patronage system where they are in full control of the media space. This means they could control the right of access and generate income without public auditing. At the same time, they could also control freedom of expression which is closely related to the right of access to economic freedom. Hence, freedom of communication in this structure must come under a double binding system.

How is the Government resolving the problem? If we take a good look we could see that the Government is in favour of the free market principle which is the dominant approach of the telecommunications proprietors. But since it could not launch a total reform due to its unequal power relations with the military. The best way to move forward with the liberalisation agenda (hand in hand with the telecommunications services) is to set up an independent regulatory agency that combine both services under the same jurisdiction. This would primarily allow the Government to extract the revenue generated from the reallocation of the radio frequencies or the sale/auction of the spectrum in the future. At least, with or without any real reallocation of the ownership right, the military radio and television must submit themselves to the new regulatory agency. In this way, the double binding system would be diluted while they render their revenue to the state. But there is hardly any guarantee on freedom of communication on the part of the public.

To borrow from Ammar Siamwala's (1992) liberalist comment of the Thai state we could well understand the policy on media reform which the Thai state is trying to form at the moment. Ammar expounded 3 types of state. First, a paternal state who knows all and controls all. Second, an indecisive state which is unable to formulate an integrated policy. And third, a state dominated by interests group. These are rooted in the Thai administrative organisation stemming from an authoritarian bureaucracy, technocratic culture in state agencies in public policy and economic policy formation, and in the political parties and politicians. Ammar's critique of the Thai state is that it seek surplus extraction from the economy but does not really develop it. If the state interfered with any

of the macro-economic policy and management it was not for the purpose of developing the economy or bringing the state agencies in line with the policy. Rather they would be based on surplus extraction.

For Ammar, then, the Thai state could not be seen as economically liberal despite its minimalist policy in many of the macro-economic areas. If we take a liberalist critique of the present legal and institutional media reform the Thai state is making attempt to liberalise by negotiating with the conservative state agencies on the ground that the regulation power will continue to be in their hands. Hence, some opportunity for rent-seeking among the bureaucracies would still be available. But this reforming attempt might fail, to the disappointment of the liberals, due to the fact that the Thai state is in an indecisive situation with several interest groups dominating the process. Secondly, the bureaucratic resistance might still be a serious obstacle at this particular juncture of deep economic crisis. And finally, the reform is not essentially about liberalisation or the development of the broadcasting sector but is seemingly carried out to further the ends of the politicians and the interest groups around them.

While liberalist like Ammar wanted to see a transparent and un-corrupted governance in order to build efficiency into a free market economy public intellectuals like Nithi Aiewswiwong (1999) and Kasien Tejapira (1999) saw that there are deeper implications to the success or failure of the entire reforming movement. The real objective of the Constitutionalist in reforming the state is to achieve freedom and democracy in political and cultural lives of the people. From this position they argued that it is debatable whether a privatisation policy would bring about a liberal economy and a reformed Thai polity. The Thai state, made up of politicians and bureaucrats, have allied themselves with the power elites and the capitalists - local, national and international - in representing their own class interests. Nithi is of the opinion that this kind of state does not care about developing a public sphere or creating a people's media or a participatory democracy. But if the middle classes, the white collar workers and intellectuals who form the forefront of the constitutional reform in 1996-1997 want to see their reform project coming to fruition they must step out of their own confine and look to the masses of the people. Instead of trying to side with the power elite (hoping they would be able to overcome the economic crisis) they should go to the lower classes and the peasants because they are the ones who are robbed of their public and natural resources similar to the plight of the middle classes who are unemployed and robbed of their voices. They are silenced without a free and democratic media system that would take up their cause as part of the national agenda.

Kasien's critical comment of the constitutional reform took as its centre argument the signification of the cultural politics of re-defining the state. He saw the notion of good governance as a term thrown into the Thai society by world organisations such as the World Bank and IMF. Each power group read their own meaning to suit their desirable political goal. Whereas the liberals see good governance as a state which is efficient, transparent and fair. That is it could deliver what it promised to the public. The interesting point is its attempt to depoliticise the term to the sphere of administration without connecting it to the sources of power relations. A good governance could, therefore, be a free market economy with any form of political rule. It might be undemocratic or authoritarian such as Singapore or it could be a democracy. But that is besides the point.

The consequent of this kind of separation of spheres is disabling to a participatory democracy. In this effort it also falls into the conservative concept of a centralised, authoritarian state for which citizens and the public are excluded from participation. And as such it would be an inexpressible damage to freedom of communication and the public sphere as Venturelli (1998) aptly pointed out.

“The separation of a political sphere from the sphere of communication structures and practices, would allow the public realm to be declassified as a political space of universalism, freedom, equality, and justice. Thus, making it far easier for communication structures to default to regulation by private interests through particularism, atomism, subjectivism, inequality, natural law and property dominion.”

The urge to converge trade and speech right or the promotion of a free trade is equal to free speech model is penetrating the Thai society with great vigor. But a cultural politics that Kasien suggested is one in which the nation-state is re-defined to embrace the diversity of cultures and peoples, ideas and identities within its broad cultural space. A democratic tradition is one that accept differences and not suppressing them in the name of national standard and unity. His view is that a genuine belief in true openness in the Thai society is seemingly the only way to salvage the nation-state from future political and social disaster. Hence, the incapability to reform the media as part of an open public sphere signified an inflexible state which could not encompass differences and change. It might well render the notion of a modern nation-state obsolete.

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